IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.35425 of 2007
DEEPAK KUMAR, s/o Binod Kumar Sah, R/o village Bishanpur, P.S. Begusarai, District Begusarai …. Petitioner
Versus
STATE OF BIHAR … Opp. Party
---

3 21.11.2008 Heard Mr. Amresh Kumar Verma, the learned counsel for the petitioner and Dr. Mayanand Jha, learned A.P.P. for the State.

Through this application the petitioner has prayed for the quashing of F.I.R. of Begusarai Town P.S. Case No. 16 of 2005, wherein he is sought to be prosecuted for offence under section 7 of the Essential Commodities Act (hereinafter referred to as "the E.C. Act") purportedly for keeping in his *kirana* shop 5 liters kerosene oil in a small plastic container allegedly for the anticipated purposes of black marketing.

WEB COPY NOT OFFICIAL

The submissions on behalf of the petitioner is that he had purchased the said kerosene oil for his personal use from the ration shop on the ration card standing in the name of his grand father and as such he had not committed any offence under the E.C. Act much less for the purposes of black marketing.

This application has to be allowed on two grounds:-

Firstly because Clause 11(a) of the notification no. 49 dated 17.10.1985 prescribing storage limits of Trade Articles under the Bihar Trade Articles (Licenses Unification) Order, 1984, provides "domestic consumer" of kerosene is a person who at any time holds stock of kerosene oil for domestic purposes not exceeding 20 (twenty) liters. Since the quantity recovered from the shop of the

petitioner was much less than the permissible storage limits prescribed and that too had been purchased from the ration shop on the basis of a ration card and no proof of black marketing had been brought to the notice it has to be presumed that the said kerosene oil was for domestic purposes and not for black marketing.

Secondly, in the written report submitted by the Marketing Officer, District Board, Begusarai, the informant, no Order made under section 3 of the E.C. Act has been shown to have been violated or contravened and as such the same would not attract a prosecution under section 7 of the E.C. Act.

Accordingly this application is allowed and the impugned order taking cognizance so far as the petitioner is concerned is hereby quashed.

WEB COPY

(Abhijit Sinha, J.)

Spd/-

NOT OFFICIAL